REMARKS

Claims 1, 3-4, 6, 8, 10-11, 13-14, 16, 18, 20-21, 26, 28, and 30-31 are currently pending in the subject application and are presently under consideration. Claim 21 has been amended as shown on p. 5 of the Reply. Claims 23-25 have been cancelled.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Rejection of Claims 1, 3-4, 6, 8, and 10 Under 35 U.S.C. §103(a)

Claims 1, 3-4, 6, 8, and 10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Dubal (U.S. 6,976,196) in view of Bishop *et al.* (U.S. 6,049,798). Claims 1 and 6 are independent claims. This rejection should be withdrawn for at least the following reasons. The cited references, either alone or in combination, do not teach or suggest all aspects of the subject claims.

> To reject claims in an application under § 103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some apparent reason to combine the known elements in the fashion claimed by the patent at issue (e.g., in the references themselves, interrelated teachings of multiple patents, the effects of demands known to the design community or present in the marketplace, or in the knowledge generally available to one of ordinary skill in the art. To facilitate review, this analysis should be made explicit. Second, there must be a reasonable expectation of success. ***Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.*** *See* MPEP § 706.02(j). *See also KSR Int'l Co. v. Teleflex, Inc.*, 550 U. S. ____, 04-1350, slip op. at 14 (2007). The reasonable expectation of success must be found in the prior art and not based on applicant's disclosure. *See In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (emphasis added).

The subject claims relate to systems and methods for determining real-time availability of computing resources. High-frequency interrupts and low priority threads are leveraged to more accurately determine which resources are available for computing. This allows a central processing unit (CPU) and a software application to accurately compensate for resource utilization and increase its performance. In particular, independent claim 1 (and similarly independent claim 6) recites *a monitoring component that obtains at least one performance*

parameter for the at least one computing resource derived, at least in part, from the low-priority thread initiated by the performance component, ***the monitoring component generates a report based on the at least one performance parameter upon the*** *occurrence of a predetermined* ***user-selected event***. Neither Dubal nor Bishop, alone or in combination, disclose or suggest the claimed aspect of applicants' invention.

Dubal relates to a system that performs diagnostics without system crashes. Resource conditions are continuously monitored by querying performance data. If the system determines adequate resources are available, diagnostic routines are run. However, the cited reference does not disclose or suggest that the diagnostic routine ***generates a report based on the at least one performance parameter upon the occurrence of a predetermined user-selected event***, as independent claim 1 recites.

Furthermore, Bishop *et al.* fails to cure the aforementioned deficiencies of Dubal with respect to the subject claims. Bishop *et al.* discloses a system monitor that captures internal resource utilization of a computer. The system captures data in real time, but the overall effect on the system is reduced to a minimum by specialized device drivers. However, the cited reference is silent with respect to a monitoring component that ***generates a report based on the at least one performance parameter upon the occurrence of a predetermined user-selected event***, as recited by the subject claims.

In view of the foregoing, it is readily apparent that the cited references, alone or in combination, do not disclose or suggest each and every element of the subject claims. Accordingly, it is respectfully requested that this rejection be withdrawn with respect to claims 1 and 6 (and associated dependent claims 3-4, 8 and 10).

II. Rejection of Claims 11, 13-14, 16, 18 and 20 Under 35 U.S.C. §102(b)

Claims 11, 13-14, 16, 18, and 20 stand rejected under 35 U.S.C. §102(b) as being anticipated by Keil *et al.* (U.S. 4,905,171). Claims 11 and 16 are independent claims. It is respectfully requested that this rejection be withdrawn for at least the following reasons. Keil *et al.* does not teach or suggest each and every element of the subject claims.

> For a prior art reference to anticipate, 35 U.S.C. §102 requires that "***each and every element*** as set forth in the claim is found, either

> expressly or inherently described, in a single prior art reference." *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950 (Fed. Cir. 1999) (*quoting Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)) (emphasis added).

Keil *et al.* discloses a system that locates performance bottlenecks. A host monitors data and collects the data in counters that reside within workstation controllers. The cited reference mentions using thresholds to determine processor usage, but fails to disclose or suggest that the thresholds are selectable by the user. Additionally, Keil *et al.* fails to disclose or suggest generating a report based on performance parameters. Consequently, the cited reference is silent with respect to a system that ***generates a report based on the at least one performance parameter upon the occurrence of a predetermined user-selected event***, as independent claims 11 and 16 recite.

In view of the foregoing, it is respectfully submitted that the cited reference does not disclose or suggest each and every element of independent claims 11 and 16 (and associated dependent claims 13, 14, 18 and 20). Accordingly, this rejection should be withdrawn.

III. Rejection of Claims 21, 23-26, 28, and 30-31 Under 35 U.S.C. §103(a)

Claims 21, 23-26, 28, and 30-31 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Berc *et al.* (U.S. 5,796,939) in view of Bishop *et al.* and further in view of Dubal. Claims 21, 26, and 31 are indpendent claims. It is respectfully requested that this rejection be withdrawn for at least the following reasons. The cited references, alone or in combination, do not disclose or suggest each and every element of the subject claims. Additionally, claims 23-25 have been cancelled rendering Examiner's rejection of these claims moot. Accordingly the rejection as to these claims should be withdrawn.

In particular, claim 21 (and similarly independent claims 26 and 31) recites a system that ***generates a report based on the at least one performance parameter upon the occurrence of a predetermined user-selected event***. As mentioned *supra*, Dubal and Bishop *et al.* fail to disclose or suggest this aspect of the subject claims. Furthermore, Berc *et al.* fails to disclose or suggest the claimed aspect of applicants' invention.

Berc *et al.* appears to disclose an apparatus that collects data from multiple processors. The system uses performance counters to store data generated by the processors while in operation. Berc *et al.* can then use the analyzed data to help optimize system design. However, the cited reference does not mention providing a user with the opportunity to generate a report based on a specific, predetermined event. Consequently, Berc *et al.* does not disclose or suggest a system that ***generates a report based on the at least one performance parameter upon the occurrence of a predetermined user-selected event***, as independent claims 21, 26 and 31 recite.

In view of the foregoing, it is readily apparent that none of the cited references disclose or suggest the subject claims. Therefore, the cited references cannot be combined to disclose each and every element of the subject claims. Accordingly, it is respectfully requested that this rejection be withdrawn with respect to claims 21, 26 and 31 (and associated dependent claims 28 and 30).

IV. Rejection of Claims 1 and 6 Under 35 U.S.C. §103(a)

Claims 1 and 6 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Berry *et al.* (U.S. 5,872,913) in view of Dubal. It is respectfully requested that this rejection be withdrawn for at least the following reasons. The cited references, alone or in combination, do not disclose or suggest the subject claims.

As mentioned *supra*, Dubal fails to disclose or suggest a system that ***generates a report based on the at least one performance parameter upon the occurrence of a predetermined user-selected event***, as independent claim 1 (and similarly independent claim 6) recites. Additionally, Berry *et al.* fails to make up for the aforementioned deficiencies of Dubal.

Berry *et al.* relates to a system that can measure data state transitions within a computer system. The measurements taken are highly precise, and have little effects on the operating system performance. Although the cited reference can measure precisely, Berry *et al.* does not allow a user to select a predetermined event and generate reports based on the performance parameters. Consequently, Berry *et al.* does not disclose or suggest a system that ***generates a report based on the at least one performance parameter upon the occurrence of a predetermined user-selected event***, as independent claim 1 (and similarly independent claim 6) recites.

Accordingly, it is readily apparent that the cited references, alone or in combination, fail to disclose or suggest each and every element of the subject claims. Therefore, it is respectfully requested that this rejection be withdrawn.

V. Rejection of Claims 11 and 16 Under 35 U.S.C. §103(a)

Claims 11 and 16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Berry *et al*. It is respectfully requested that this rejection be withdrawn for at least the following reasons. Claims 11 and 16 recite a limitation similar to claim 1, and as noted *supra*, Berry *et al*. fails to disclose or suggest this limitation. Accordingly, claims 11 and 16 are not obvious in view of Berry *et al*. Therefore, it is respectfully requested that this rejection be withdrawn.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP547US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

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